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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MAY 25, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte: In Re
Amendments to Securities
Act Rules

CASE NO. SEC010033

ORDER ADOPTING AMENDED RULES

On April 20, 2001, the Division of Securities and Retail Franchising ("Division") mailed notice of proposed amendments to the Commission's Securities Act Rules ("Rules") and forms to all issuer agents, broker-dealers, and investment advisors pending registration or registered under the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia, and to other interested parties. Notice of the proposed amendments was also published in several newspapers in general circulation throughout Virginia and in the "Virginia Register of Regulations" on April 23, 2001. The notices describe the proposed amendments and afford interested parties an opportunity to file written comments or requests for hearing.

Written comments were filed by The Financial Planning Association of Central Virginia. After considering the comments received, comments were addressed informally and no substantive

changes were necessary. In addition, the Division addressed some minor inconsistencies.

The Commission, upon consideration of the proposed amendments as modified, the written comment filed, the recommendation of the Division and the record in this case, finds that the proposed modified amendments should be adopted. Accordingly,

IT IS ORDERED THAT:

(1) The evidences of mailing and publication of notice of the proposed Rules and forms amendments shall be filed in and made part of the record in this case.

(2) The proposed Rules and forms amendments are adopted effective July 1, 2001. A copy of the modified Rules and forms amendments is attached to and made part of this order.

(3) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

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21 VAC 5-20-10. Application for registration as a broker-dealer.

- A. Application for registration as a broker-dealer by a NASD member shall be filed ~~with the Commission at its Division of Securities and Retail Franchising and/or such other entity designated by the Commission on and~~ in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with forms and regulations prescribed by the Commission and shall include all information required by such forms.
- B. An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer by a NASD member unless the following executed forms, fee and information are submitted ~~to the Commission~~:
1. Form BD.
 2. Statutory fee payable to the ~~Treasurer of Virginia~~ NASD in the amount of \$200 pursuant to § 13.1-505 F of the Act.
 3. ~~A signed and executed Agreement for Inspection of Records form.~~
 4. ~~A copy of the firm's written supervisory procedures. Sole proprietorships are excluded.~~
 5. ~~Financial statements required by 21 VAC 5-20-80.~~
 6. ~~Evidence of exam requirements for principals required by 21 VAC 5-20-70.~~
 7. Any other information the Commission may require.
- C. Application for registration as any other broker-dealer shall be filed with the Commission at its Division of Securities and Retail Franchising or such other entity designated by the Commission on and in full compliance with forms prescribed by the Commission and shall include all information required by such forms.

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D. An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer unless the following executed forms, fee and information are submitted to the Commission:

1. Form BD.
2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 pursuant to § 13.1-505 F of the Act.
3. Financial statements required by 21 VAC 5-20-80.
4. Evidence of exam requirements for principals required by 21 VAC 5-20-70.
5. Any other information the Commission may require.

~~EE.~~ The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-20-30. Renewals.

A. To renew its registration, a NASD member broker-dealer will be billed by the NASAA/NASD Central Registration Depository the statutory fee of \$200 prior to the annual expiration date. A renewal of registration shall be granted as a matter of course upon payment of the proper fee ~~together with any surety bond that the Commission may, pursuant to 21 VAC 5-20-300, require~~ unless the registration was, or the renewal would be, subject to revocation under § 13.1-506.

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B. Any other broker-dealer shall file with the Commission at its Division of Securities and Retail Franchising the following items at least 30 days prior to the expiration of registration.

1. Application for Renewal of a Broker-Dealer's Registration (Form S.A.2) accompanied by the statutory fee of \$200.
2. Financial Statements:
 - a. The most recent certified financial statements prepared by an independent accountant in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants. "Certified Financial Statements," "Financial Statements" and "Independent Accountant" shall have the same definition as those terms are defined under subsection B of 21 VAC 5-20-80.
 - b. If the most recent certified financial statements precede the date of renewal by more than 120 days, the registrant must submit:
 - (1) The certified financial statements required by subdivision ~~B 2~~ a of this ~~regulation~~ subsection within 60 days after the date of the financial statements, and;
 - (2) A copy of the most recent Part II or Part II A filing of Form X-17A-5 prepared in accordance with Securities Exchange Act Rule 17a-5 (17 CFR 240.17a-5).
 - c. Whenever the Commission so requires, an interim financial report shall be filed as of the date and within the period specified in the Commission's request.

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21 VAC 5-20-40. Updates and amendments.

- A. A NASD member broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the regulations prescribed by the Commission.
- B. Any other broker-dealer shall update its Form BD as required by Form BD instructions and shall file all such amendments with the Commission at its Division of Securities and Retail Franchising.
- ~~C. If registrant changes its name or address a newly executed Agreement for Inspection of Records form must be submitted to the Commission.~~

21 VAC 5-20-60. Broker-Dealer merger or consolidation.

- A. When there is a merger or consolidation of two or more registrants, or the reorganization of a registrant, the surviving or new corporation shall amend or file, as the case may be, Form BD (the filing of Form BD requires the payment of a \$200 fee) and shall file a copy of the following with the Commission at its Division of Securities and Retail Franchising upon its request:
 - 1. The certificate of merger or consolidation.
 - 2. The plan of merger or consolidation.
 - 3. The amended or new charter and by-laws.
 - 4. Any document of explanation.
 - ~~5. Agreement for Inspection of Records form (original document required).~~
 - 6. The current financial statements of the surviving or new corporation and surety bond, if necessary.

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- B. Such amendment and/or filing shall be made immediately after the merger or consolidation becomes effective, except that the required financial statements shall be filed within 30 calendar days of the effective date of the merger or consolidation. The registration of the surviving or new corporation usually will be granted by the Commission on the same date that the merger or consolidation becomes effective. Each agent of the non-surviving or new corporation shall comply with 21 VAC 5-20-90 before registration as an agent with his new employer becomes effective. Every other agent of the defunct ~~corporation(s)~~ corporation shall comply with 21 VAC 5-20-90 or 21 VAC 5-20-130, whichever may be applicable.

21 VAC 5-20-70. Examinations/qualifications.

- A. Broker-dealers registered with the Commission that are registered pursuant to § 15 of the Securities Exchange Act of 1934 (15 USC § 78o).
1. All principals of an applicant for registration as a broker-dealer must provide the Commission with evidence of passing: (i) the Uniform Securities Agent State Law Examination - Series 63; (ii) the Uniform Combined State Law Examination - Series 66 and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
 2. In lieu of meeting the examination requirement described in subdivision 1 of this subsection A, at least two principals of an applicant may provide evidence of having passed the General Securities Principal Qualification Exam (Series 24) or a similar examination in general use by securities administrators which, after

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reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.

For the purposes of this subsection A, the term "principal" means any person associated with a broker-dealer who is engaged directly (i) in the management, direction or supervision on a regular or continuous basis on behalf of such broker-dealer of the following activities: sales, training, research, investment advice, underwriting, private placements, advertising, public relations, trading, maintenance of books or records, financial operations; or (ii) in the training of persons associated with such broker-dealer for the management, direction, or supervision on a regular or continuous basis of any such activities.

3. Subsection A of this section is applicable only to principals of broker- dealers that are, or intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

B. Broker-dealers registered with the Commission that are not registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

1. All principals of an applicant for registration as a broker-dealer must provide the Commission with evidence of passing:
 - a. The Uniform Securities Agent State Law Examination - Series 63; the Uniform Combined State Law Examination - Series 66 and the General Securities Representative Examination, Series 7; or a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates; and

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- b. Any additional securities-related ~~examination(s)~~ examination that the Commission deems appropriate in light of the business in which the applicant proposes to engage.
2. This subsection is applicable only to principals of broker-dealers that are not, or do not intend to forthwith become, registered pursuant to § 15 of the federal Securities Exchange Act of 1934.

21 VAC 5-20-80. Financial statements and reports.

- A. All financial statements required for registration of broker-dealers shall be prepared in accordance with generally accepted accounting principles, as promulgated by the American Institute of Certified Public Accountants.
- B. Definitions:

"Certified financial statements" shall be defined as those financial statements examined and reported upon with an opinion expressed by an independent accountant and shall include at least the following information:
 1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
 2. Representations as to whether the audit was made in accordance with generally accepted auditing standards and designation of any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which may have been omitted, and the reason for their omission; nothing in this section however shall be construed to imply authority for the omission of any procedure which independent accountants would ordinarily employ in the course of an audit for the purpose of expressing the opinions required under this section;

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3. Statement of the opinion of the accountant in respect to the financial statements and schedules covered by the report and the accounting principles and practices reflected therein, and as the consistency of the application of the accounting principles, or as to any changes in such principles which would have a material effect on the financial statements;
4. Any matters to which the accountant takes exception shall be clearly identified, the exemption thereto specifically and clearly stated, and, to the extent practicable, the effect of each such exception on the related financial statements given.

"Financial statements" shall be defined as those reports, schedules and statements, prepared in accordance with generally accepted accounting principles and which contain at least the following information unless the context otherwise dictates:

1. Statement of Financial Condition or Balance Sheet;
2. Statement of Income;
3. Statement of Changes in Financial Position;
4. Statement of Changes in Stockholder's/Partner's/Proprietor's Equity;
5. Statement of Changes in Liabilities Subordinated to Claims of General Creditors;
6. Schedule of the Computation of Net Capital Under Rule 15c3-1 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-1);
7. Schedule of the Computation for Determination of the Reserve Requirements under Exhibit A of Rule 15c3-3 and Information Relating to the Possession and Control Requirements under Rule 15c3-3 of the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).

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"Independent accountant" shall be defined as any certified public accountant in good standing and entitled to practice as such under the laws of the accountant's principal place of business or residence, and who is, in fact, not controlled by, or under common control with, the entity or person being audited; for purposes of this definition, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates in which, during the period of the accountant's professional engagements to examine the financial statements being reported on or at the date of the report, the accountant or the firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest; or in which, during the period of the accountant's professional engagement to examine the financial statements being reported on, at the date of the report or during the period covered by the financial statements, the accountant or the firm or a member thereof was connected as a promoter, underwriter, voting trustee, director, officer, or employee, except that a firm will not be deemed not independent in regard to a particular person if a former officer or employee of such person is employed by the firm and such individual has completely disassociated himself from the person and its affiliates covering any period of employment by the person. For partners in the firm participating in the audit or located in an office of the firm participating in a significant portion of the audit; and in determining whether an accountant may in fact be not independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.

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"Review of financial statements" shall be defined as those financial statements prepared by an independent accountant, and shall include at least the following:

1. Date of report, manual signature, city and state where issued, and identification without detailed enumeration of the financial statements and schedules covered by the report;
2. Representations that the review was performed in accordance with standards established by the American Institute of Certified Public Accountants;
3. Representations that the accountant is not aware of any material modification that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles, other than those modifications, if any, indicated in the accountant's report.

"Unaudited financial statements" shall be defined as those financial statements prepared in a format acceptable to the Commission not accompanied by the statements and representations as set forth in the definitions of "certified financial statements" or "review of financial statements" of this subsection, and shall include an oath or affirmation that such statement or report is true and correct to the best knowledge, information, and belief of the person making such oath or affirmation; such oath or affirmation shall be made before a person authorized to administer such oath or affirmation, and shall be made by an officer of the entity for whom the financial statements were prepared.

C. Requirements for broker-dealers:

1. Every broker-dealer applicant that is subject to the Securities Exchange Act of 1934 shall file with the Commission at its Division of Securities and Retail

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Franchising upon its request any financial information that is required to be provided to the SEC, or its designee, under the Securities Exchange Act of 1934.

2. All other broker-dealer applicants not subject to subdivision 1, unless exempted under subdivision 3 of this subsection, shall file financial statements as of a date within 90 days prior to the date of filing its application for registration, which statements need not be audited provided that the applicant shall also file audited financial statements as of the end of the most recent fiscal year end.
3. Those broker-dealer applicants which have been in operation for a period of time less than 12 months, and for which audited financial statements have not been prepared or are not available, and which are not registered with the SEC, a national securities association or a national securities exchange shall be permitted to file a review of financial statements prepared by an independent accountant provided the following conditions are met:
 - a. Such financial statements shall be as of a date within 30 days prior to the date of filing an application for registration; and
 - b. Such financial statements shall be prepared by an independent accountant as defined under subsection B of this section and in accordance with the definitions of "financial statements" and "review of financial statements" in subsection B and in accordance with subdivision 3 of this subsection.

21 VAC 5-20-85. Limited Canadian broker-dealer registration.

- A. A broker-dealer that is resident in Canada and has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer is registered under this section, effect transactions in securities on behalf of a person who:

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1. Is a Canadian, resident in the Commonwealth of Virginia, with whom the broker-dealer had a bona-fide broker-dealer-client relationship prior to the person entering the United States; and
 2. Whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.
- B. Application for registration as a broker-dealer under this section shall be filed with the Commission at its Division of Securities and Retail Franchising or such other entity designated by the Commission on and in full compliance with forms prescribed by the Commission and shall include all information required by such forms.
- C. An application for registration as a broker-dealer under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee and information are submitted to the Commission:
 1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
 2. Statutory fee payable to the Treasurer of Virginia in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.
 3. Evidence that the applicant is registered as a broker-dealer in good standing in the jurisdiction from which it is effecting the transactions.
 4. Evidence that the applicant is a member of a self-regulatory organization or stock exchange in Canada.
 5. Any other information the Commission may require.
- D. A broker-dealer registered under this section shall:
 1. Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

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2. Provide the Commission upon request with its books and records relating to its business in the Commonwealth of Virginia as a broker-dealer;
 3. Immediately notify the Commission of any criminal action taken against it, or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct;
 4. Disclose to its clients in the Commonwealth of Virginia that the broker-dealer and its agents are not subject to the full regulatory requirements of the Act.
- E. A broker-dealer's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F.
- F. To renew its registration, a broker-dealer registered under this section shall file with the Commission at its Division of Securities and Retail [Franchise Franchising] the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its principle place of business, or if no such renewal application is required, the most recent application filed pursuant to subsection C 1 along with the statutory fee in the amount of \$200 United States currency pursuant to § 13.1-505 F of the Act.
- G. A Canadian broker-dealer registered under this section is exempt from all other rules applicable to broker-dealers except 21 VAC 5-20-280.

21 VAC 5-20-90. Application for registration as a broker-dealer agent.

- A. Application for registration as a ~~NASD member broker-dealer~~ an agent of a NASD member shall be filed on and in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with the forms and

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regulations prescribed by the Commission. The application shall include all information required by such forms.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4.
2. The statutory fee in the amount of \$30. The check must be made payable to the NASD.
3. Evidence in the form of a NASD exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
4. Any other information the Commission may require.

B. Application for registration for all other broker-dealer agents shall be filed on and in compliance with all requirements and forms prescribed by the Commission.

An application shall be deemed incomplete for purposes of applying for registration as a broker-dealer agent unless the following executed forms, fee and information are submitted:

1. Form U-4.
2. The statutory fee in the amount of \$30. The check must be made payable to the Treasurer of Virginia.

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3. Evidence in the form of a NASD exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Exam, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
 4. Any other information the Commission may require.
- C. The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-20-120. Updates and amendments.

A broker-dealer agent shall amend or update his/her Form U-4 as required by the "Amendment Filings" provisions set forth under "How to Use Form U-4." All filings shall be made with the NASAA/NASD Central Registration Depository system for ~~NASD-member-firm~~ agents of NASD member firms or with the Commission for all other broker-dealer agents.

21 VAC 5-20-130. Termination of registration.

When a broker-dealer agent terminates a connection with a broker-dealer, or a broker-dealer terminates connection with an agent, the broker-dealer shall file notice of such termination on Form U-5 within 30 calendar days of the date of termination. All filings shall be made with the

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NASAA/NASD Central Registration Depository system for ~~NASD member firm~~ agents of NASD member firms or with the Commission for all other broker-dealer agents.

21 VAC 5-20-155. Limited Canadian broker-dealer agent registration.

- A. An agent of a Canadian broker-dealer who has no office or other physical presence in the Commonwealth of Virginia may, provided the broker-dealer agent is registered under this section, effect transactions in securities as permitted for a broker-dealer registered under 21 VAC 5-20-81 on behalf of a person:
1. Who is a Canadian, resident in the Commonwealth of Virginia, with whom the broker-dealer had a bona fide broker-dealer-client relationship prior to the person entering the United States; and
 2. Whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.
- B. Application for registration as a broker-dealer agent under this section shall be filed with the Commission at its Division of Securities and Retail Franchising or such other entity designated by the Commission on and in full compliance with forms prescribed by the Commission and shall include all information required by such forms.
- C. An application for registration as a broker-dealer agent under this section shall be deemed incomplete for purposes of applying for registration unless the following executed forms, fee and information are submitted to the Commission:
1. An application in the form required by the jurisdiction in which the broker-dealer maintains its principal place of business.
 2. Statutory fee payable to the Treasurer of Virginia in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.

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3. Evidence that the applicant is registered as a broker-dealer agent in good standing in the jurisdiction from which it is effecting the transactions.
 4. Any other information the Commission may require.
- D. A broker-dealer agent registered under this section shall:
 1. Maintain his provincial or territorial registration in good standing;
 2. Immediately notify the Commission of any criminal action taken against him, or of any finding or sanction imposed on him as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct.
- E. A broker-dealer agent's registration under this section, and any renewal thereof, shall expire annually at midnight on the 31st day of December unless renewed in accordance with subsection F of this section.
- F. To renew the registrations of its agents, a broker-dealer registered under this section shall file with the Commission at its Division of Securities and Retail ~~Franchise~~Franchising] the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer maintains its ~~[principle principal]~~ place of business, or if no such renewal application is required, the most recent application filed pursuant to subdivision C 1 of this section along with the statutory fee in the amount of \$30 United States currency pursuant to § 13.1-505 G of the Act.
- G. A Canadian broker-dealer agent registered under this section is exempt from all other rules applicable to a broker-dealer agent except 21 VAC 5-20-280.

21 VAC 5-20-220. Examination/qualification; waiver of examination requirement.

- A. Except as described in subsection B of this section, an individual applying for registration as an agent of the issuer shall be required to provide evidence in the form of a NASD

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- exam report of passing: (i) the Uniform Securities Agent State Law Examination, Series 63; (ii) the Uniform Combined State Law Examination, Series 66, and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
- B. The Commission may, [in a registered offering which is not being made to the general public or] in a Small Company Offering Registration, waive the examination requirement for an officer or director of an issuer that is a corporation, or a general partner of an issuer that is a limited partnership or a manager of an issuer that is a limited liability company who:
1. Will receive no commission or similar remuneration directly or indirectly in connection with the offer or sale of the issuer's securities; and
 2. [~~Agrees~~In the case of a small company offering registration, agrees] to deliver to each prospective purchaser of a security to be issued by such issuer, at or before the time the offering document is required to be delivered, a copy of "A Consumer's Guide to Small Business Investments" prepared by NASAA (see CCH NASAA Reports ¶3676)[~~;~~ and
 3. An application to register is accompanied by an executed Affidavit Regarding Offer of SCOR Securities by Issuer Agent.

21 VAC 5-20-240. Books and records of broker-dealers.

- A. Every registered broker-dealer shall make and keep current the following books and records relating to his business, provided that any broker-dealer subject to the Securities Exchange Act of 1934 shall not be required to comply with any of the following

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provisions which are different from or in addition to the requirements pertaining to such books and records established under the Securities Exchange Act of 1934.

1. Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered.
2. Ledgers (or other records) reflecting all assets and liabilities, income, expense and capital accounts.
3. Ledger accounts (or other records) itemizing separately as to each cash and margin account of every customer, and of such broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account and all other debits and credits to such account.
4. Ledgers (or other records) reflecting the following:
 - a. Securities in transfers;
 - b. Dividends and interest received;
 - c. Securities borrowed and securities loaned;
 - d. Moneys borrowed and moneys loaned (together with a record of the collateral therefore and any substitutions in such collateral);
 - e. Securities failed to receive and failed to deliver;

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- f. All long and all short stock record differences arising from the examination, count, verification and comparison, pursuant to Rule 17a-13 and Rule 17a-5 under the Securities Exchange Act of 1934 (17 CFR 240. 17a-13 and 17 CFR 240. 17a-5) as amended (by date of examination, count, verification and comparison showing for each security the number of shares long or short count differences); and
 - g. Repurchase and reverse repurchase agreements.
- 5. A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safekeeping and securities that are subjects of repurchase or reverse repurchase agreements) carried by such broker-dealer for its account or for the account of its customers or partners or others and showing the location of all securities long and the offsetting positions to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.
- 6. A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, to the extent feasible, the time of execution or cancellation. Orders entered pursuant to the exercise of a discretionary power by such broker-dealer, or any agent or

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employee thereof, shall be so designated. For the purpose of this subsection the following definitions apply:

- a. *"Instruction"* includes instructions between partners, agents and employees of a broker-dealer.
- b. *"Time of entry"* means the time when such broker-dealer transmits the order of instruction for execution or, if it is not so transmitted, the time when it is received.

- 7. A memorandum of each purchase and sale of securities for the account of such broker-dealer showing the price and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a broker-dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order, and the account in which it was entered.
- 8. Copies of confirmations of all purchases and sales of securities including all repurchase and reverse repurchase agreements and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such broker-dealer.
- 9. A record in respect of each cash and margin account with such broker-dealer indicating (i) the name and address of the beneficial owner of such account; (ii) except with respect to exempt employee benefit plan securities as defined in Rule 14a-1(d) under the Securities Exchange Act of 1934 (17 CFR 240.14a-1(d)) but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of such broker-dealers, or a registered clearing agency or

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its nominee objects to disclosure of his identity, address and securities positions to issuers; and (iii) in the case of a margin account, the signature of such owner, provided that in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account.

10. A record of all puts, calls, spreads, straddles and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing at least, an identification of the security and the number of units involved.
11. A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital as of the trial balance date pursuant to 21 VAC 5-20-290.
12. Questionnaire or application for employment:
 - a. A questionnaire or application for employment executed by each agent of such broker-dealer, which questionnaire or application shall be approved in writing by an authorized representative of such broker-dealer and shall contain at least the following information with respect to each such person:
 - (1) The agent's name, address, social security number, and the starting date of his employment or other association with the broker-dealer.
 - (2) The agent's date of birth.
 - (3) The educational institutions attended by the agent and whether or not the agent graduated therefrom.

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- (4) A complete, consecutive statement of all the agent's business connections for at least the preceding 10 years, including the agent's reason for leaving each prior employment, and whether the employment was part-time or full-time.
- (5) A record of any denial of a certificate, membership, or registration, and of any disciplinary action taken, or sanction imposed upon the agent, by any federal or state agency, or by any national securities exchange or national securities association, including a record of any finding that the agent was a cause of any disciplinary action or had violated any law.
- (6) A record of any denial, suspension, expulsion or revocation of a certificate, membership or registration of any broker-dealer with which the agent was associated in any capacity when such action was taken.
- (7) A record of any permanent or temporary injunction entered against the agent or any broker-dealer with which the agent was associated in any capacity at the time such injunction was entered.
- (8) A record of any arrest or indictment for any felony; any misdemeanor pertaining to securities, commodities, banking, insurance, real estate (including, but not limited to, acting as or being associated with a broker-dealer, investment company, investment advisor, futures sponsor, bank, or savings and loan association), fraud, false statements or omission, wrongful taking

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of property, bribery, forgery, counterfeiting or extortion; and the disposition of the foregoing.

(9) A record of any other name or names by which the agent has been known or which the agent has used.

b. If such agent has been registered as a representative of such broker-dealer with, or his employment has been approved by the National Association of Securities Dealers, Inc., or the American Stock Exchange, the Boston Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, the Pacific Coast Stock Exchange, or the Philadelphia-Baltimore Stock Exchange, then the retention of a full, correct, and complete copy of any and all applications for such registration or approval shall be deemed to satisfy the requirements of this subdivision.

13. Records required to be maintained pursuant to paragraph (d) of Rule 17f-2 under the Securities Exchange Act of 1934 (17 CFR 240.17f-2) as added in Release No. 34-12214, under the Securities Exchange Act of 1934.
14. Copies of all Forms X-17F-1A filed pursuant to Rule 17f-1 under the Securities Exchange Act of 1934 (17 CFR 240.17f-1), all agreements between reporting institutions regarding registration or other aspects of Rule 17f-1 under the Securities Exchange Act of 1934 (17 CFR 240.17f-1) and all confirmations or other information received from the SEC or its designee as a result of inquiry, as added in Release No. 34-11615 and amended in Release No. 34-15867 under the Securities Exchange Act of 1934.

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15. Records required to be maintained pursuant to paragraph (e) of Rule 17f-2 under the Securities Exchange Act of 1934 (17 CFR 240.17f-2) as added in Release No. 34-19268 under the Securities Exchange Act of 1934.
 16. All such other books and records as may be required, kept, maintained and retained by broker-dealers under the Securities Exchange Act of 1934.
- B. Exemptions from the requirements of subsection A of this section:
1. This section does not require a registered broker-dealer who transacts a business in securities through the medium of any other registered broker-dealer to make or keep such records of transactions cleared for such broker-dealer as are customarily made and kept by a clearing broker-dealer pursuant to the requirement of subsection A of this section and of 21 VAC 5-20-250 provided that the clearing broker-dealer has and maintains net capital of not less than \$25,000 and is otherwise in compliance with 21 VAC 5-20-290.
 2. This section shall not be deemed to require a registered broker-dealer who transacts a business in securities through the medium of any other registered broker-dealer, to make or keep such records of transactions cleared for such broker-dealer by a bank as are customarily made and kept by a clearing broker-dealer pursuant to the requirements of this section and 21 VAC 5-20-250. Provided that such broker-dealer obtains from such bank an agreement, in writing, to the effect that the records made and kept by such bank are the property of the broker-dealer, and that such books and records are available for examination by representatives of the Commission as specified in § 13.1-518 of the Act, and that it will furnish to the Commission, upon demand, at such place designated in such demand, true, correct, complete and current copies of any or

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all of such records. Nothing herein contained shall be deemed to relieve such broker-dealer from the responsibility that such books and records be accurate and maintained and preserved as specified in this section and 21 VAC 5-20-250.

- C. This section does not require a broker-dealer to make or keep such records as are required by subsection A of this section reflecting the sale of United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G.
- D. The records specified in subsection A of this section shall not be required with respect to any cash transaction of \$100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof.
- E. For purposes of transactions in municipal securities by municipal securities broker-dealers, compliance with Rule G-8 of the Municipal Securities Rulemaking Board will be deemed to be compliance with this section.
- F. Every registered broker-dealer as a condition of its registration as a broker-dealer under the Act hereby agrees and represents that:
 - 1. All of the broker-dealer's records, immediately upon the request of the Commission, will be made available for inspection by the Commission and reproduction for the Commission in the office where such records are maintained;
 - 2. All of the broker-dealer's records (or legible copies of the same, or print-outs of same, if automated) pertaining to a securities transaction any part of which occurred or is to occur within the Commonwealth of Virginia will be made available for inspection of the Commission in the office of the Commission's

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Division of Securities and Retail Franchising within 48 hours after request of the Commission for same;

3. The term “records” shall mean and include all books, papers, documents, tapes, films, photographs, electronic readable format or other materials, regardless of physical form or characteristics, (i) that are maintained for the recordation or storage of information prepared, used or to be used in connection with a securities transaction or (ii) that were used or are to be used in connection with securities transactions;
4. Failure to comply with this subsection may be considered grounds for the institution of a proceeding to revoke a broker-dealer’s registration or other penalty prescribed by the Act;
5. Any broker-dealer subject to an investigation made by the Commission may be required to pay the actual cost of the investigation.

21 VAC 5-20-280. Prohibited business conduct.

A. No broker-dealer shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers and/or in the payment upon request of free credit balances reflecting completed transactions of any of its customers;
2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;
3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment

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- objectives, financial situation and needs, and any other relevant information known by the broker-dealer;
4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;
 5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time and/or price for the execution of orders;
 6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account;
 7. Fail to segregate customers' free securities or securities held in safekeeping;
 8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;
 9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;
 10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

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11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1- 514 B 6 of the Act;
12.
 - a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of monies due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;
 - b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;
13. Offer to buy from or sell to any person any security at a stated price unless such broker-dealer is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell;
14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by such broker-dealer, or by any person for whom he is acting or with whom he is associated in such distribution, or any person controlled by, controlling or under common control with such broker-dealer;

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15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:
 - a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;
 - b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; provided, however, nothing in this subsection shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;
 - c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others;
16. Guarantee a customer against loss in any securities account of such customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for such customer;
17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports to report any transaction as a purchase or sale of any security

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unless such broker-dealer believes that such transaction was a bona fide purchase or sale of such security; or which purports to quote the bid price or asked price for any security, unless such broker-dealer believes that such quotation represents a bona fide bid for, or offer of, such security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;
19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the Commission, a balance sheet of the issuer as of a date within 18 months of the offer and/or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subsection shall comply with the provisions of § 13.1-507 of the Act;
20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any

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contract with or for a customer for the purchase or sale of such security, the existence of such control to such customer, and if such disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member; or
22. Fail or refuse to furnish a customer, upon reasonable request, information to which such customer is entitled, or to respond to a formal written request or complaint ;~~or.~~
23. ~~Fail to make a disclosure in a timely manner to clients or perspective clients, that the broker-dealer has not substantially addressed year 2000 computer or equipment problems, or is substantially uncertain of its ability to resolve these problems.~~

B. No agent shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;
2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;
3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

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4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;
 5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or
 6. Engage in conduct specified in subdivisions A 2, 3, 4, 5, 6, 10, 15, 16, 17, or 18 of this section.
- C. Failure to comply with any of the applicable continuing education requirements set forth in any of the following, if such failure has resulted in an agent's denial, suspension or revocation ~~[or of]~~ a license, registration or membership with a self regulatory organization, shall be deemed a demonstration of a lack of business knowledge by an agent insofar as such business knowledge is required for registration by § 13.1-505 A 3 of the Act.
1. Schedule C to the National Association of Securities Dealers By-Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;
 2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;
 3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;
 4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;

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5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995;
6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;
7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or
8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995.

Each or all of the education requirements standards listed above may be changed by each respective entity and if so changed will become a requirement if such change does not materially reduce the educational requirements expressed above or reduce the investor protection provided by such requirements.

- D. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes such security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.
- E. The purpose of this subsection is to identify practices in the securities business which are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers and/or sales agents.
 1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

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2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.
3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, non-public information which would effect the value of the security.
4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.
5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.
6. Although nothing in this subsection precludes application of the general anti-fraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:
 - a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities

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- transaction to be paid to the agent including commissions, sales charges, or concessions.
- b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.
 - c. Conducting sales contests in a particular security.
 - d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.
 - e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.
 - f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.
- 7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.
 - 8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.
 - 9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or

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the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.
11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain; however, this subdivision shall apply only if the firm has been a market maker in such security at any time during the month in which the monthly or quarterly statement is issued.
12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.
13. In connection with the solicitation of a purchase or sale of a designated security:
 - a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or
 - b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:

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- (1) Transactions in which the price of the designated security is \$5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be \$5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of \$5.00 or more.
- (2) Transactions that are not recommended by the broker-dealer or agent.
- (3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the immediately preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the immediately preceding 12 months.
- (4) Any transaction or transactions that, upon prior written request or upon its own motion, the Commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

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- c. For purposes of this section the term "designated security" means any equity security other than a security:
- (1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;
 - (2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;
 - (3) Issued by an investment company registered under the Investment Company Act of 1940;
 - (4) That is a put option or call option issued by The Options Clearing Corporation; or
 - (5) Whose issuer has net tangible assets in excess of \$4,000,000 as demonstrated by financial statements dated less than 15 months previously that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and
 - (a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of 17 CFR 210.2.02 under the Securities Exchange Act of 1934; or

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- (b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to 17 CFR 241.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

F. Customer notice requirements follow:

IMPORTANT CUSTOMER NOTICE--READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

- Q. What is meant by the BID and ASK price and the spread?
- A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.
- Q. How can I follow the price of my security?
- A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer

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transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of \$1.00, you would pay \$100 (100 shares x \$1.00 = \$100). If the BID price at the time you purchased your stock was \$.50, you could sell the stock back to the broker-dealer for \$50 (100 shares x \$.50 = \$50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the

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state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.

- G. Engaging in or having engaged in conduct specified in subsection A, B, C, D, or E of this section, or other conduct such as forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, or manipulative or deceptive practices shall be grounds under the Act for imposition of a penalty, denial of a pending application or refusal to renew or revocation of an effective registration.

21 VAC 5-20-290. Financial responsibility.

- A. The term “financial responsibility,” as used in § 13.1-505 A of the Act, shall mean that the net capital of an applicant or registrant subject to the Securities Exchange Act of 1934 shall be demonstrated and maintained at a level required by subsection B of this section.
- B. For the purpose of demonstrating “financial responsibility” all broker-dealers subject to the Securities Exchange Act of 1934 shall meet and maintain the net capital and ratio requirements as prescribed by Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1). The net capital and ratio requirements shall be computed in accordance with Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).
- C. Every broker-dealer subject to the Securities Exchange Act of 1934 shall notify the Commission at its Division of Securities and Retail Franchising in writing within three business days should its net capital drop below its net capital requirement and shall immediately take action necessary to establish a net capital in compliance with Rule 15c3-1 of the Securities Exchange Act of 1934.

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- D. Every broker-dealer not subject to the Securities Exchange Act of 1934 shall file with the Commission certified financial statements as defined in subsection B of 21 VAC 5-20-80 within 60 days of its fiscal year end.

~~21 VAC 5-30-30. Refund of fees paid by unit investment trusts.~~

- A. ~~A unit investment trust (or sponsor who acted on behalf of such trust) which has paid a fee pursuant to § 13.1-509 of the Act may obtain a refund of that portion of the fee paid in excess of \$400 if all of the following conditions are satisfied:~~
- ~~1. A completed Request for Refund Affidavit (form S.A.10) is filed with the Commission at its Division of Securities and Retail Franchising within six months of the Virginia effective date of the registration statement related to the offering for which the refund is requested.~~
 - ~~2. The amount of the refund due is \$25 or more.~~
- B. ~~The refundable portion of a fee is that part of the fee which exceeds \$400 less 1/20 of 1.0% of the amount, if any, by which sales in the Commonwealth pursuant to the offering exceeded \$800,000.~~
- C. ~~The provisions of this section shall apply to fees paid on and after July 1, 1990.~~

~~21 VAC 5-30-60. Requirements for renewal applications filed pursuant to § 13.1-512 of the Act.~~

~~In accordance with § 13.1-512 of the Act, a registration statement and any renewal thereof relating to a security issued by a face amount certificate company or a redeemable security issued by an open end management company as those terms are defined in the Investment Company Act of 1940 shall expire at midnight on the annual date of its effectiveness in Virginia. The effectiveness of such registration statement may be renewed for an additional one year period by filing the materials described below with the Commission or the Securities Registration~~

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~~Depository, Inc. (SRD), when that facility is available, or any other entity approved by rule or order of the Commission, prior to the expiration date.~~

- ~~1. — A renewal application filed with the Commission shall contain the following:~~
 - ~~a. — A facing page of Form U-1.~~
 - ~~b. — A fee of \$300 (make check payable to Treasurer of Virginia).~~
- ~~2. — A renewal application filed with the SRD shall be filed on and in compliance with all requirements and forms prescribed by the SRD and shall include a fee of \$300 (make check payable to SRD).~~

~~Note: — Refer to 21 VAC 5-60-10 for prospectus filing requirements.~~

21 VAC 5-30-80. Adoption of NASAA statements of policy.

The Commission adopts the following NASAA statements of policy that shall apply to the registration of securities in the Commonwealth. It will be considered a basis for denial of an application if an offering fails to comply with an applicable statement of policy. While applications not conforming to a statement of policy shall be looked upon with disfavor, where good cause is shown, certain provisions may be modified or waived by the Commission.

1. Options and Warrants, as amended ~~November 18, 1997~~ September 28, 1999.
2. Underwriting Expenses, Underwriter's Warrants, Selling Expenses and Selling Security Holders, as amended ~~April 27, 1997~~ September 28, 1999.
3. Real Estate Programs, as amended ~~October 24, 1991~~ September 29, 1993.
4. Oil and Gas Programs, as amended October 24, 1991.
5. Cattle-Feeding Programs, as adopted September 17, 1980.
6. Unsound Financial Condition, as ~~adopted April 27, 1997~~ amended September 28, 1999.
7. Real Estate Investment Trusts, as ~~amended~~ adopted September 29, 1993.

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8. Church Bonds, as adopted April 29, 1981.
9. Small Company Offering Registrations, as adopted April 28, 1996.

21 VAC 5-30-90 ~~Small corporate~~ company offering registration.

- A. A registration statement on Form U-7 (Small ~~Corporate~~ Company Offering Registration Form), as amended by NASAA on ~~April 28, 1996~~ September 28, 1999, may be used to register securities by qualification under § 13.1-510 of the Act, provided the conditions set forth in subsection B of this section, and the instructions to Form U-7, are satisfied.
- B. The financial statements included in the application for registration shall be those required under the instructions to the Form U-7. Financial statements shall be prepared in accordance with either U.S. or Canadian generally accepted accounting principles. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; however, if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants or the Canadian equivalent:
 1. The issuer shall not have previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailing, public meetings, "cold call" telephone solicitation, or any other method directed toward the public;
 2. The issuer has not been previously required under federal, state, provincial or territorial securities laws to provide audited financial statements in connection with any sale of its securities;

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3. The aggregate amount of all previous sales of securities by the issuer (exclusive of debt financing with banks and similar commercial lenders) shall not exceed \$1,000,000; and
4. The amount of the present offering does not exceed \$1,000,000.

21 VAC 5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

- A. Application for registration as an investment advisor shall be filed ~~with the Commission at its Division of Securities and Retail Franchising or such other entity designated by the Commission on and~~ in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system and in full compliance with forms and regulations prescribed by the Commission and shall include all information required by such forms.
- B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor unless the following executed forms, fee and information are submitted:
 1. Form ADV.
 - a. Part 1A and 1B filed with the IARD system.
 - b. Part II filed with the Commission at its Division of Securities and Retail Franchising.
 2. The statutory fee in the amount of \$200. The check must be made payable to the ~~Treasurer of Virginia~~ NASD.
 3. ~~Signed and executed Agreement for Inspection of Records.~~
 4. ~~Written supervisory procedures pursuant to 21 VAC 5-80-170 D. (Entities employing no more than one investment advisor representative are excluded.)~~

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- ~~53.~~ Any other information the Commission may require.
- C. The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.
- D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section ~~with the Commission at its Division of Securities and Retail Franchising or such other entity designated by the Commission~~ in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system.
- E. A notice filing for a federal covered advisor shall be deemed incomplete unless the following executed forms, fee and information are submitted:
1. Form ADV.
 2. The statutory fee in the amount of \$200. The check must be made payable to the ~~Treasurer of Virginia~~ NASD.
 - ~~3. Consent to Service of Process on Form S.A.14.~~
- ~~Notwithstanding the exclusion provided by subdivision (vi) of § 13.1-501 of the Act in the definition of "investment advisor," for the period ending three years from October 11, 1996, the Commission may require the registration as an investment advisor of any federal covered advisor who fails or refuses to pay a fee required by this section; provided that a delay in payment or an underpayment of a fee that is remedied within 15~~

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~~days after receipt of notice from the Commission shall not constitute a failure or refusal to pay the fee.~~

21 VAC 5-80-30. Renewals.

- A. To renew its registration, an investment advisor will be billed by the ~~Division of Securities and Retail Franchising or any other entity designated by the Commission~~ IARD system the statutory fee of \$200 prior to the annual expiration date. A renewal of registration shall be granted as of course upon payment of the proper fee together with any surety bond that the Commission may require pursuant to 21 VAC 5-80-180 B unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.
- B. To renew its notice filing a federal covered advisor will be billed by the ~~Division of Securities and Retail Franchising or any other entity designated by the Commission~~ IARD system the statutory fee of \$200 prior to the annual expiration date. A renewal of notice filing shall be granted as a matter of course upon payment of the proper fee.

~~Notwithstanding the exclusion provided by subdivision (vi) of § 13.1-501 of the Act in the definition of "investment advisor," for the period ending three years from October 11, 1996, the Commission may require the registration as an investment advisor of any federal covered advisor who fails or refuses to pay a fee required by this rule; provided that a delay in payment or an underpayment of a fee that is remedied within fifteen days after receipt of notice from the Commission shall not constitute a failure or refusal to pay the fee.~~

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21 VAC 5-80-40. Updates and amendments.

- A. An investment advisor or federal covered advisor shall update its Form ADV as required by the "updating" provisions of Items 1 and 10 of Form ADV Instructions Item 3, "When am I required to update my Form ADV?" of Form ADV: General Instructions and shall file all such information with the ~~Commission at its Division of Securities and Retail Franchising~~ IARD system.
- B. An investment advisor shall file the balance sheet as prescribed by Part II, ~~Item 14~~ of Form ADV, unless excluded from such requirement, with the Commission at its Division of Securities and Retail Franchising within 90 days of the investment advisor's fiscal year end. Any investment advisor who is registered in the state in which it maintains its principal place of business shall file with the Commission at its Division of Securities and Retail Franchising any financial documents required to be filed by the state within 10 days of the time it must file these documents in such state.
- C. A federal covered advisor shall maintain Part II of Form ADV at its principal place of business and shall make a copy available to the Commission at its Division of Securities and Retail Franchising within five days of its request.

21 VAC 5-80-50. Termination of registration and notice filings.

When an investment advisor or federal covered advisor desires to terminate its registration or notice filing, it shall file a ~~written request for such termination with the Commission at its Division of Securities and Retail Franchising~~ Form ADV-W with the IARD system. Notice of termination by a federal covered advisor shall be effective upon receipt by the Commission or at a later date specified in the notice. ~~An investment advisor or federal covered advisor may file SEC Form ADV-W in lieu of a written request for termination.~~

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21 VAC 5-80-60. Investment advisor merger or consolidation.

In any merger ~~or~~, consolidation, or reorganization of an investment advisor or federal covered advisor, the surviving or new entity shall amend or file, as the case may be, a new application for registration or notice filing together with the proper fee must be filed with the Commission at its Division of Securities and Retail Franchising IARD system.

For each investment advisor representative of the new or surviving entity who will transact business in this Commonwealth, an application for registration together with the proper fee or fees must also be filed with the ~~Commission at its Division of Securities and Retail Franchising or any other entity designated by the Commission and~~ IARD system in full compliance with the forms prescribed by the Commission. The foregoing filing requirement applies to each investment advisor representative who has a place of business located in the Commonwealth and who is connected with a federal covered advisor that is the new or surviving entity to the merger or consolidation.

21 VAC 5-80-70. Application for registration as an investment advisor representative.

- A. Application for registration as an investment advisor representative shall be filed ~~with the Commission at its Division of Securities and Retail Franchising or any other entity designated by the Commission on and~~ in compliance with all requirements of the NASAA/NASD Central Registration Depository system and in full compliance with forms and regulations prescribed by the Commission. The application shall include all information required by such forms.
- B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor representative unless the following executed forms, fee and information are submitted:

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1. Form U-4.
 2. The statutory fee in the amount of \$30. The check must be made payable to the ~~Treasurer of Virginia~~ NASD.
 3. Evidence of passing: (i) the Uniform Investment Adviser Law Examination, Series 65; (ii) the Uniform Combined State Law Examination, Series 66 and the General Securities Representative Examination, Series 7; or (iii) a similar examination in general use by securities administrators which, after reasonable notice and subject to review by the Commission, the Director of the Division of Securities and Retail Franchising designates.
 4. Any other information the Commission may require.
- C. The Commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the Commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the Commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

21 VAC 5-80-90. Renewals.

To renew the ~~registration(s)~~ registration of its investment advisor ~~representative(s)~~ representatives, an investment advisor or federal covered advisor will be billed by the ~~Division of Securities and Retail Franchising or any other entity designated by the Commission~~ IARD system the statutory fee of \$30 per investment advisor representative. A renewal of ~~registration(s)~~ registration shall be granted as a matter of course upon payment of the proper fee or fees unless the registration was, or the renewal would be, subject to revocation under § 13.1-506 of the Act.

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21 VAC 5-80-100. Updates and amendments.

An investment advisor representative shall amend or update Form U-4 as required by the ~~"Amendment Filings" provisions set forth under "How to Use Form U-4."~~ "General Instructions" of Form U-4 Instructions. All filings shall be made ~~with the Division of Securities and Retail Franchising or any other entity designated by the Commission~~ in compliance with all requirements of the NASAA/NASD Central Registration Depository system.

21 VAC 5-80-110. Termination of registration.

- A. When an investment advisor representative terminates a connection with an investment advisor, or an investment advisor terminates connection with an investment advisor representative, the investment advisor shall file with the ~~Division of Securities and Retail Franchising or any other entity designated by the Commission~~ NASAA/NASD Central Registration Depository system notice of such termination on Form U-5 within 30 calendar days of the date of termination.
- B. When an investment advisor representative terminates a connection with a federal covered advisor, the ~~investment advisor representative~~ federal covered advisor shall file with the ~~Division of Securities and Retail Franchising or any other entity designated by the Commission~~ NASAA/NASD Central Registration Depository system notice of such termination on Form U-5 within 30 calendar days of the date of termination.

21 VAC 5-80-160. Recordkeeping requirements for investment advisors.

- A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be

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required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.
2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.
3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed such order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.
4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.
5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.
6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income

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statement and such other statements as may be required pursuant to 21 VAC 5-80-180, and internal audit working papers relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by such investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.
8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.
9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

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10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.
11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.
12. a. A record of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may

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also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

- b. For purposes of this subdivision 12 the following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

- (1) Any person in a control relationship to the investment adviser,
- (2) Any affiliated person of a controlling person, and
- (3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies,

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more than 25% of the ownership interest of a company shall be presumed to control such company.

- c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.
13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any

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such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

- b. An investment advisor is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.
- c. For purposes of this subdivision 13, the following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of such the

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recommendations or of the information concerning the
recommendations:

- (1) Any person in a control relationship to the investment advisor;
- (2) Any affiliated person of a controlling person; and
- (3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21 VAC 5-80-190 and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.
15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:
 - a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;
 - b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and,

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- c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

- 16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); however, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.
- 17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment advisor or any investment advisor representative or employee, and regarding any written customer or client complaint.

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18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.
 19. Written procedures to supervise the activities of employees and investment advisor representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.
 20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.
- B. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:
1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to such accounts.
 2. A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits.
 3. Copies of confirmations of all transactions effected by or for the account of any such client.
 4. A record for each security in which any such client has a position, which record shall show the name of each such client having any interest in each security, the amount or interest of each such client, and the location of each such security.

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- C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:
1. Records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale.
 2. For each security in which any such client has a current position, information from which the investment advisor can promptly furnish the name of each such client and the current amount or interest of such client.
- D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom such investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.
- E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:
1. All books and records required to be made under the provisions of subsection A to subdivision C 1, inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment advisor.

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2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.
3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.
4. Books and records required to be made under the provisions of subdivisions A 17 through 20, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.
5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C inclusive of this subdivision, and (ii)

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the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

- F. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the Commission in writing of the exact address where such books and records will be maintained during such period.
- G. 1. The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:
 - a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;
 - b. Be ready at all times to promptly provide, any facsimile enlargement of film or computer printout or copy of the computer storage medium which the Commission by its examiners or other representatives may request;

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- c. Store separately from the original one other copy of the film or computer storage medium for the time required;
 - d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and
 - e. With respect to records stored on photographic film, at all times have available, for the Commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.
 - 2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.
- H. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.
- I. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected, if, before the order is given by the

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- investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.
- J. Every investment advisor registered or required to be registered in this state and that has its principal place of business in a state other than this state shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub.L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.
- K. Every registered investment advisor as a condition of its registration as an investment advisor under the Act hereby agrees and represents that:
1. All of the investment advisor's records, immediately upon the request of the Commission, will be made available for inspection by the Commission and reproduction for the Commission in the office where such records are maintained;
 2. All of the investment advisor's records (or legible copies of the same, or print-outs of same, if automated) pertaining to the investment advisory business any part of which occurred or is to occur within the Commonwealth of Virginia will be made available for inspection of the Commission in the office of the Commission's Division of Securities and Retail Franchising within 48 hours after request of the Commission for same;
 3. The term "records" shall mean and include all books, papers, documents, tapes, films, photographs, electronic readable format or other materials, regardless of physical form or characteristics, (i) that are maintained for the recordation or storage of information prepared, used or to be used in connection with the

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investment advisory business or (ii) that were used or are to be used in connection with the investment advisory business;

4. Failure to comply with this subsection may be considered grounds for the institution of a proceeding to revoke an investment advisor's registration or other penalty prescribed by the Act;
5. Any investment advisor subject to an investigation made by the Commission may be required to pay the actual cost of the investigation.

21 VAC 5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or federal covered advisor shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

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3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.
6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

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9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.
10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.
11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:
 - a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
 - b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.
12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.
13. Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940 (17 CFR 275.206(4)-1).

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14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.
 15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.
 16. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.
 - ~~17. Failing to make a disclosure in a timely manner to clients or perspective clients, that the investment advisor has not substantially addressed year 2000 computer or equipment problems, or is substantially uncertain of its ability to resolve these problems.~~
- B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients

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and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.
2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.
3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.
4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.
5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

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6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.
7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.
8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.
9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.
10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.
11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could

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reasonably be expected to impair the rendering of unbiased and objective advice including:

- a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or
 - b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.
12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.
 13. Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940.
 14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless consented to by the client.
 15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21 VAC 5-80-140.
 16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula

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for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor representative without the consent of the other party to the contract.

- C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent not permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).
- D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

21 VAC 5-80-210. Exclusions from definition of "investment advisor" and "federal covered advisor."

- A. The terms "investment advisor" and "federal covered advisor" do not include any person engaged in the investment advisory business whose only client in this Commonwealth is one (or more) of the following:
1. An investment company as defined in the Investment Company Act of 1940.
 2. An insurance company licensed to transact insurance business in this Commonwealth.
 3. A bank, a bank holding company as defined in the Bank Holding Company Act of 1956, a trust subsidiary organized under Article 3.1 (§ 6.1-32.1 et seq.) of Chapter 2 of Title 6.1 of the Code of Virginia, a savings institution, a credit union, or a trust company if the entity is either (i) authorized or licensed to

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transact such business in this Commonwealth or (ii) organized under the laws of the United States.

4. A broker-dealer so registered under the Act and under the Securities Exchange Act of 1934.
 5. An employee benefit plan with assets of not less than \$5,000,000.
 6. A governmental agency or instrumentality.
 7. A corporation, general partnership, limited partnership, limited liability company, trust or other legal organization that (i) has assets of not less than \$5,000,000 and (ii) receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members or beneficiaries, provided the investment advisor or federal covered advisor is exempt from registration pursuant to § 203(b)(3) of the Investment Advisors Act of 1940 or by any rule or regulation promulgated by the SEC under that section.
- B. Any investment advisor or federal covered advisor who (i) does not have a place of business located within this Commonwealth and (ii) during the preceding 12-month period has had fewer than six clients who are residents of this Commonwealth other than those listed in subsection A of this section is excluded from the registration and notice filing requirements of the Act.
- C. The term “investment advisor” does not include any certified public accountant who holds a valid CPA certificate as defined by § 54.1-2000 of Title 54.1 of the Code of Virginia and who during the ordinary course of business:

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1. Issues publications, writings, reports, or testimony in a court of law or in an arbitration as to the value of privately held securities in a transaction involving the purchase, sale or valuation of a business;
2. Issues publications, writings, reports or testimony in a court of law or in an arbitration as to the advisability of investing in, purchasing, or selling privately held securities in a transaction involving the purchase, sale or valuation of a business; or
3. Advises clients about the disposition or value of assets, of which ownership is evidenced by privately held securities and such assets are the subject of (i) bankruptcy, (ii) estate or gift tax planning or settlement, (iii) divorce, (iv) sale of a business, whether whole or in part, (v) employee stock option plan, or (vi) an insurance settlement.

Broker-Dealer and Agent Forms

Form BD - Uniform Application for Broker-Dealer Registration (2/98).

~~Agreement for Inspection of Records (rev. 7/98).~~

Form S.A.11 - Broker-Dealer's Surety Bond (rev. 7/99).

Form S.A.2 - Application for Renewal of a Broker-Dealer's Registration (rev. 7/99).

Form S.D.4 - Application for Renewal of Registration as an Agent of an Issuer (1997).

Form S.D.4.A - Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).

Form S.D.4.B - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).

Form S.D.4.C - Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).

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Form BDW - Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/89).

Rev. Form U-4 - Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U-5 - Uniform Termination Notice for Securities Industry Registration (11/97).

Investment Advisor and Investment Advisor Representative Forms

Form ADV - Uniform Application for Registration of Investment Advisors (rev. ~~7/97~~ 1/01).

Form ADV-W – Notice of Withdrawal from Registration as an Investment Advisor (rev. 1/01).

~~Agreement for Inspection of Records (rev. 7/98).~~

Surety Bond Form (rev. 7/99).

Rev. Form U-4 - Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U-5 - Uniform Termination Notice for Securities Industry Registration (11/97).

Form S.A.3 - Affidavit for Waiver of Examination (rev. 7/99).

~~Form S.A.14 – Consent to Service of Process for Notice Filing as a Federal Covered Advisor (7/97).~~

Form S.A. 15 - Investment Advisor Representative Multiple Employment Agreement (7/98).

Securities Registration and Notice Filing Forms

Form U-1 Uniform Application to Register Securities (7/81).

Form U-2 - Uniform Consent to Service of Process (7/81).

Form U-2a - Uniform Form of Corporate Resolution (rev. 7/99).

Form S.A.4 - Registration by Notification - Original Issue (rev. 11/96).

Form S.A.5 - Registration by Notification - Non-Issuer Distribution (rev. 11/96).

Form S.A.6 - Registration by Notification - Pursuant to 21 VAC 5-30-50 Non-Issuer Distribution
“Secondary Trading” (1989).

Form S.A.8 - Registration by Qualification (7/91).

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Form S.A.10 - Request for Refund Affidavit (Unit Investment Trust) (rev. 7/99).

Form S.A.12 - Escrow Agreement (1971).

Form S.A.13 - Impounding Agreement (rev. 7/99).

Form VA-1 - Parts 1 and 2 - Notice of Limited Offering of Securities (rev. 11/96).

Form NF - Uniform Investment Company Notice Filing (4/97).